



E1-2493
VJ

Herb M. Jones
Director, Government Affairs

9 August 2006

Ms. Victoria Rutson
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 33407

Dear Ms. Rutson:

We thank you for taking the time to meet with us in July. As discussed, we are preparing a plan for complying with all conditions of the STB's decision dated February 15, 2006. We expect to provide you a draft plan shortly after finalizing financing, in any event well before construction commencement.

As we discussed, pre-construction activity is ongoing. We expect to resume the identification of historic properties pursuant to the Programmatic Agreement's conditions soon. The treatment plan for any adversely effected properties will be submitted for review upon completion of that survey. And, in preparation of the Compliance Plan we anticipate initiating face-to-face meetings with the SHPOs during the week of 7 August, to discuss our Section 106 compliance efforts.

Our plans for addressing the terms of Mitigation Condition 146, the hiring of a third-party contractor, will be included in the Compliance Plan. It is DM&E's intent to initiate this process after project financing has been secured and prior to construction. We expect the Third Party's participation to begin shortly before construction with the review of our compliance measures, and transition into construction activities.

There is one condition (No. 74) that needs clarification now in order to advance engineering and contracting efforts. Under one interpretation, it would hold our project to a standard unique in the country, costing many millions of dollars without material benefit. Because it relates to U.S Army Corps of Engineers issues, we plan to review it with them in the coming days and weeks to ensure our understanding of the current practice is correct, and likely will be contacting you for clarification or modification if the Corps is in agreement. The condition, as written, could require the DM&E to ensure that new waterway crossing structures are sufficient to pass a 100-year flood without increasing the flood level by more than one-half foot. As such, it would stipulate a requirement that is more restrictive than the national standard, which can be found at 44 CFR 60.3(d)(2). The "new build" portion of the project, which is in Wyoming and South Dakota, will have many new waterway crossing structures. Requiring these bridges to meet the half-foot rise criterion would create an unreasonable burden on DM&E, especially given that many of the crossings are in rural areas where the one-foot backwater criterion would cause no economic damage to riparian land uses. If there are specific areas where this condition would serve a particular purpose, we would be happy to accommodate that. But the concern is that it not be applied in wholesale fashion without a defined purpose.

We propose to resolve this issue through a series of meetings with representatives from the two Corps of Engineers' Districts having regulatory authority over the project (St. Paul and Omaha),

and the appropriate state agencies before seeking any formal action or interpretation by you. For now, we just wanted to give you a 'heads up' on this as it is a significant issue. It surfaced only when engineers recently noticed its major and (we expect) unintended consequence while drafting contractor bid specifications. We will follow up with you on this subject once we have completed our discussions with the Corps of Engineers and others.

We look forward to working with you and STB staff as we proceed with the development of this project. In the meantime, we invite you or your staff to let me know if you have questions or concerns regarding these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Jones', with a large, sweeping flourish extending from the end of the signature.

Herb M. Jones
Director, Government Affairs

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